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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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LEE & HAYES, PLLC 601 W. RIVERSIDE AVENUE SUITE 1400 SPOKANE, WA 99201				
EXAMINER				
WHIPPLE, BRIAN P				
ART UNIT		PAPER NUMBER		
2448				
NOTIFICATION DATE		DELIVERY MODE		
10/04/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

lhptoms@leehayes.com

Office Action Summary

Application No.

10/760,975

Applicant(s)

WALTER ET AL.

Examiner

Brian P. Whipple

Art Unit

2448

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-38 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☒ Claim(s) 1-13 and 23-38 is/are allowed.
- 7) ☒ Claim(s) 14-22 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-884)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____
- Paper No(s)/Mail Date 2/28/11 and 5/12/11

DETAILED ACTION

1. Claims 1-38 are pending in this application and presented for examination.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/28/11 has been entered.

Response to Arguments

3. Applicant's arguments, see pages 15-29 and 34-43, filed 2/28/11, with respect to claims 1-13 and 23-38 have been fully considered and are persuasive. The rejections of claims 1-13 and 23-28 have been withdrawn.
4. Applicant's arguments, see pages 29-34, filed 2/28/11, with respect to claims 14-22, have been fully considered but they are not persuasive. The applicant argues independent claims 14 and 21 and their dependents are allowable for reasons similar to claim 1, but claims 14 and 21 lack the allowable features of claim 1. For example, claim 1 is directed to a detailed

creation of a custom emoticon mapped to particular pixel sets and character sequences, but claims 14 and 21 may simply be read as claiming previously created non-custom emoticons that are displayed.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 14, 17, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heikes et al. (Heikes), U.S. Publication No. 2003/0225847 A1, in view of Danker et al. (Danker), U.S. Publication No. 2002/0184309 A1.

7. As to claim 14, Heikes discloses a method comprising:
receiving a communication by a message receiver (Fig. 11, the users input messages in order to engage in conversation), the communication including a character sequence in a text message (Fig. 8, the emoticons are displayed with the associated character sequences; Fig. 11, the users input character sequences in order to engage in conversation), wherein the

character sequence includes alphanumeric characters and is mappable to an array grid of pixels residing outside the communication (Fig. 8, the emoticons are displayed with the associated character sequences; [0068], “the IM sender may provide a custom smiley theme”).

Heikes is silent on retrieving the array grid of pixels using the character sequence; replacing the character sequence within the text message in the communication with the array grid of pixels;

displaying the array grid of pixels and the text message on a screen, the array grid of pixels being displayed within the text message in place of the character sequence.

However, Danker discloses retrieving the array grid of pixels using the character sequence (Fig. 6B; [0016]; [0075]);

replacing the character sequence within the text message in the communication with the array grid of pixels (Fig. 6B; [0016]; [0075])

displaying the array grid of pixels and the text message on a screen, the array grid of pixels being displayed within the text message in place of the character sequence (Fig. 4; Fig. 6B; [0016]; [0075]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Heikes in the aforementioned manner as taught by Danker in order to indicate emotions with character sequences while replacing the

sequences themselves with more indicative graphical expressions in areas such as the conversation window or in an area near the user's screen name.

8. As to claim 17, Heikes and Danker disclose the invention substantially as in parent claim 14, wherein the retrieving further includes mapping to a local storage medium to determine if the array grid of pixels has been previously stored in the local storage medium (Heikes: [0058] – [0059]).

9. As to claim 21, the claim is rejected for reasons similar to claim 14 above.

10. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heikes and Danker as applied to claims 14, 17, and 21 above, and further in view of Hickman et al. (Hickman), U.S. Patent No. 7,013,327 B1.

11. As to claim 15, Heikes and Danker disclose the invention substantially as in parent claim 14 above, wherein the communication includes at least one of an identifier of the array grid of pixels and a location of the array grid of pixels (Fig. 8, the emoticons are displayed with the associated character sequences; [0068], “the IM sender may provide a custom smiley theme”; wherein the emoticons must include identifiers and a location in order to be

properly rendered at the recipient's conversation window), but are silent on storing an identifier and a location in a header of a message.

However, Hickman discloses storing an identifier and a location in a header of a message (Fig. 22A; Col. 18, ln. 45-48).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Heikes and Danker by including the identifier and the location in the header of the message as taught by Hickman in order to include the information through a standardized means, such as the header of a message.

12. As to claim 16, the claim is rejected for reasons similar to claim 15 above.
13. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heikes and Danker as applied to claims 14, 17, and 21 above, and further in view of Dawson, U.S. Patent No. 6,252,588 B1.
14. As to claim 15, as opposed to Hickman, alternatively Dawson discloses storing an identifier and a location in the header of a message. Dawson may be interpreted as being more relevant to the disclosure of the instant application as Dawson parses a received email message header for an image and then displays the image to the recipient of the message

(Col. 20, ln. 56-61). In other words, the character sequence (that is the file name/path identifying the image) in the header is translated into a corresponding image by Dawson. This is analogous to the instant application in that a character sequence is also translated into an image (a graphical emoticon).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Heikes and Danker by including the identifier and the location in the header of the message as taught by Dawson in order to parse the header to identifying the identifier and the location of a corresponding image and display the image to the end user. Including this in the header as opposed to the body of the message, leads to quicker access to the corresponding image, as the body of the message need not be examined as part of the process. This is more efficient, as the header is typically relatively small and limited in size, as opposed to the body which may be much larger and thus take more time to examine than the header.

15. As to claim 16, the claim is rejected for reasons similar to claim 15 above.

16. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heikes and Danker as applied to claims 14, 17, and 21 above, and further in view of Goodwin, III et al. (Goodwin), U.S. Publication No. 2002/0065931 A1.

17. As to claim 18, Heikes and Danker disclose the invention substantially as in parent claim 17, but are silent on the local storage medium comprises a cache of temporary files used by a web browser.

However, this is one of the most well known uses of caching in the field. Goodwin discloses using a local storage medium comprising cache of temporary files to be used by a web browser ([0005], ln. 1-6).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Heikes and Danker by caching temporary files used by a web browser as taught by Goodwin so that the same content need not be downloaded again the next time the web content is accessed (Goodwin: [0005], ln. 1-6).

18. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heikes and Danker as applied to claim 14 above, in view of Goldschneider et al. (Goldschneider), U.S. Publication No. 2002/0107925 A1, and further in view of Huntington et al. (Huntington), U.S. Publication No. 2003/0131098 A1.

19. As to claim 19, Heikes and Danker disclose the invention substantially as in parent claim 14, including checking for the array grid of pixels on a local storage medium (see the

rejection of claim 17 above), but are silent on if the array grid of pixels is not located in the local storage medium, then attempting to establish a direct link with a sender of the communication to retrieve the array grid of pixels from a storage medium associated with the sender; and

if a direct link to the sender cannot be established, then retrieving the array grid of pixels through a server between the sender of the communication and the receiver of the communication.

However, Goldschneider discloses if a file is not located in local storage medium, then attempting to establish a direct link with a sender of a communication to retrieve the array grid of pixels from a storage medium associated with the sender ([0032]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Heikes and Danker by enabling a receiver to request retransmission of a file as taught by Goldschneider in order to allow a receiver to receive a file that was either lost or never received properly.

Heikes, Danker, and Goldschneider are silent on if a direct link to the sender cannot be established, then retrieving the array grid of pixels through a server between the sender of the communication and the receiver of the communication.

However, Huntington discloses if a direct link to a sender cannot be established, then retrieving a file through a server between the sender of a communication and a receiver of the communication ([0203]).

Huntington teaches a method by which content unavailable from the intended sender can instead be sent from a cache server.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Heikes, Danker, and Goldschneider by acquiring content from a cache server if access to the original sender cannot be established as taught by Huntington in order to access content from a cache server even when the original sender cannot properly send the requested content (Huntington: [0203]).

20. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heikes, Danker, Goldschneider, and Huntington as applied to claim 19 above, and further in view of Zhao, U.S. Patent No. 7,353,253 B1.

21. As to claim 20, Heikes, Danker, Goldschneider, and Huntington describe the invention substantially as in parent claim 19, but are silent on a direct link using a peer-to-peer connection using one of TCP or UDP.

However, Zhao discloses a direct link using a peer-to-peer connection using UDP (Fig. 1; Col. 6, ln. 37-39 and 42-48).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Heikes, Danker, Goldschneider, and Huntington by including a direct link using a peer-to-peer connection using UDP as taught by Zhao in order to avoid the extra processing required in a client-server model (Col. 6, ln. 42-48) and in order to take advantage of the bandwidth consumption efficiency of the UDP multicast form of delivery (Col. 6, ln. 42-48).

22. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heikes and Danker as applied to claim 21 above, and further in view of Official Notice (See MPEP 2144.03).

23. As to claim 22, Heikes and Danker disclose the invention substantially as in parent claim 21, but do not explicitly teach adapting images of various sizes and formats to a pixel array format of predetermined size, for use as the graphics data of emoticons ("for use as the graphics data of emoticons" is intended use and therefore not given weight).

Official Notice (see MPEP 2144.03) is taken that adapting images of various sizes and formats to a pixel array format of predetermined size was well known in the art at the time of the invention.

Applicant fails to disclose the step as occurring automatically. Methods for conforming to a requirement for pixel dimensions such as a user cropping and/or shrinking an image prior to use (such as the requirement for buddy icons to meet pixel dimension requirements or an emoticon to meet the required 19 x 19 pixel grid limitation as discussed for claim 3 above) were well known in the art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Heikes and Danker by adapting images of various sizes and formats to a pixel array format of predetermined size to get this well-known feature.

Allowable Subject Matter

24. Claims 1-13 and 23-38 are allowed.

25. The following is a statement of reasons for the indication of allowable subject matter: the prior art fails to teach or reasonably suggest the invention as claimed. See the applicant's remarks filed 2/28/11 for a detailed explanation of the differences between the prior art relied upon and the invention as claimed.

Conclusion

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Whipple whose telephone number is (571)270-1244. The examiner can normally be reached on Mon-Fri (8:30 AM to 5:00 PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on 571-272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian P. Whipple

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/Brian P. Whipple/

Examiner, Art Unit 2448

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